Bill to amend the Cochin Nayar Regulation.

President.—We were at section 35 A. Any other Member wishing to speak further on the merits of the section or the merits of the amendment? What is your position, Mr. Kannan Nayar?

Mr. K. P. Kannan Nayar.—I have no objection to accept the amendment.

President.—If there is any controversy, you must further discuss. If you are amenable to accept the amendment, further discussion can be stopped, otherwise you must discuss the matter.

Mr. K. P. Kannan Nayar.—The trend of yesterday's discussion was not only with reference to the amendment but with reference to the section itself, as it stands. There was some suggestion that the section itself is unnecessary and that it may be deleted altogether. It may work hardship upon the *Karanavan* by giving the *Anandaravans* a right to ask him to render an account. What is contemplated by the section is an independent action against the *Karanavan* to render an account of his management and to recover the amounts misappropriated by him, an action independent of an action to remove him from the management or a partition suit. The view was expressed in the House that it was unnecessary that such an independent action should be given to the *Anandaravan*. That was where we were standing yesterday.

President.—He is to manage the estate properly, and he must keep regular accounts.

Mr. K. P. Kannan Nayar.—He is bound to keep regular accounts under section 25. Section 25 casts the liability upon him to keep a true and correct account of the income and expenditure.

President.—If he is bound to keep such an account, should he not place it at the disposal of the other members?

Mr. K. P. Kannan Nayar.—So far as that also is concerned, section 25 provides that "the *Karanavan* or the manager for the time being shall keep a true and correct account of the income and expenditure of the *tarawad*." There is that provision also. But it is not expressed whether under that section there is any liability to render accounts. No doubt he is to keep an account. But the section by itself does not render him liable to render an account, and that doubt has been expressed in XVIII-Cochin, where one of the Judges expressed the view that, under the law as laid down by the Nayar Regulation, the *Karanavan* is not bound to render an account but only to keep an account. The other Judge was not of that view. No definite statement has been made by the other Judge with reference to this matter.

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President.—The *Karanavan* must submit the account for the inspection of the other members of the *tarawad*, and suppose some defects in the account are disclosed, then the *Karanavan* must have an opportunity of explaining those, and that liability must arise. So that, this declaration of right should not be followed by a remedy to enforce that right.

Mr. K. P. Kannan Nayar.—That is the question now. It is with that view that section 35 A was incorporated.

Mr. T. M. Krishna Menon.—Section 35 refers to the right of the other members to conserve the property. Has there been any decision upon that matter?

Mr. K. P. Kannan Nayar.—No.

President.—Let us come to a clinching position. The Select Committee adopted this. The Select Committee has done it. Let it stand as it is. This was made specific by Mr. Anantapadmanabha Ayyar. Each member cannot go and ask for a rendering of the accounts. Not less than 2/3 of the adult members of the *tarawad* must join together and demand a rendering of the account. On that particular point you have made the original section specific, the original section was a solution of that point. Your amendment leaves out the other points, namely, that the other members of the *tarawad* are entitled to recover the losses, if any, sustained on account of his fraud or misappropriation. The amendment does not touch upon that point.

Mr. V. V. Anantapadmanabha Ayyar.—When a person is liable to render an account, he is also liable to surrender what amount is due from him.

President.—Legally by rendering the accounts no amount is found due. This section simply says, this is on account of his fraud or misappropriation, not for any other reason. If he has committed fraud, if he has misappropriated, then the *tarawad* will be entitled to recover the amount from him; but not for any other reason. But you put it that, even otherwise, if the *tarawad* has sustained loss apart from the fraud or misappropriation, he will have to make good the loss.

Mr. V. V. Anantapadmanabha Ayyar.—It is only in these cases that a *Karanavan* will become liable to the *tarawad*. It is only in cases of loss or misappropriation on account of the accounts of the *Karanavan*.

President.—That has been settled by decided cases. He is not liable to make good the loss upon any other ground. We have simply codified that. The only question then will be, if he is under the decision liable to make good the losses only for cases of fraud or misappropriation, then of course this section only repeats that. So that, there is no harm done by codifying it. So

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that, it may stand as it is. Then the only question is about the right of the members where 2/3 of the adult members join together. Now, two-thirds of the adult members of the *tarawad* must join together for calling for a rendering of the account. As the section originally stood, the special section is amended by the Select Committee that any member can call for an account. Then the *Karanavan* will be disturbed every time. There must be a sort of consultation amongst the members of the *tarawad*, 2/3 of the adult members must join together, and then, if there is an agreement among them, they can ask for a rendering of the account. It is a check upon arbitrariness. Is there any means of coming to an understanding?

Mr. K. P. Kannan Nayar.—Then with reference to the amendment which insists upon 2/3, it may practically nullify the effect of section 35 as it stands. Section 35 as it stands says that "every member of a *tarawad* has the right to see that the *tarawad* estate is properly administered by the *Karanavan* and is duly conserved for the use of the *tarawad* and that his or her right to succeed to the *Karanavanship* is in no way impaired." That section confers upon every individual member to see that the *tarawad* affairs are properly administered and managed. The only doubt there is: how is the member to enforce that right that is given to him under section 35. That would be the question, and if it is by asking for an account, for a suit for an account, whether 2/3 of the members of the *tarawad* should be parties or should join. This would be practically taking away the right given under section 35.

President.—If there are no accounts of management, they will seek to remove him from the *Karanavanship*.

Mr. K. P. Kannan Nayar.—Section 36 specifically provides for the removal.

President.—It is only some very general statement. There is a declaration of right.

Mr. K. P. Kannan Nayar.—There must be a remedy.

President.—Even if they keep this, section 36 is one of the consequential remedies by which every member has a right to seek the removal of the *Karanavan*. That right having been declared, namely, that it is not confined to the *Karanavan* but is given to all the members of the *tarawad* for the preservation of the *tarawad*, so the *Karanavan* has a right to enjoy. This is also a declaration of right. If it causes to impair the interests of the *tarawad* or defeat the purpose of the *tarawad*. then he can be removed. Every member of the *tarawad* has a right to see that the *tarawad* is properly administered by the *Karanavan*. Every member has got this right to see that the *tarawad* property is kept intact, and every member of the *tarawad*, when his time

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comes, has a right to succeed to the *Karanavanship*. These are the two rights declared by that section 35. Every member has a right to keep the *tarawad* a conserved property and to ask the *Karanavan* to submit accounts. Otherwise you may not be able to conserve the *tarawad* estate. The only question now is about the 2/3 of the adult members, whether they should join together for calling for a rendering of the accounts, or each man has a right to himself to call for a rendering of the accounts. It is the only point of importance in connection with the amendment.

Mr. T. M. Krishna Menon.—Section 35 is only a declaratory section. It has not provided for any remedies. If the section gives a right, the courts will enforce that right. The right is given to every member to conserve the property, to see that the property is not wasted, and the courts have not given a ruling as to how that right is to be enforced.

President.—What I want to point out is that the conservation of the right depends upon the regular and proper management of the *tarawad* properties by the *Karanavan* or the manager for the time being, and, therefore, the next section comes and says that it does not seek for removal, so long as this is done.

Mr. T. M. Krishna Menon—Every member has a right to see that it is managed properly, and so long as that section remains uncommented upon, section 35A is unnecessary.

President.—Is it an incidental right conferred by section 35?

Mr. T. M. Krishna Menon.—May be.

President.—Can you make it clear?

Mr. T.M. Krishna Menon.—The objection raised is this. Supposing, under section 35, every member has this right, it is taken away by the amendment. One part will then be inconsistent with the other. To avoid inconsistency, the amendment should be deleted. The new section need not be introduced.

President.—When there is a legislative body, why should we go and remove and put any interpretation? Sections 35 and 35A may be considered together, and one section may be included under these conditions. This is a matter of doubt, and the legislative body may make it clear.

Mr. T. M. Krishna Menon.—Both the sections may be altered and one section enacted instead.

President.—Is it your point that, for the purpose of making the *Karanavan* liable for rendering accounts, no restrictions should be placed?

Mr. T. M. Krishna Menon.—I am not for allowing individual members to sue the *Karanavan*. I am for having joint

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consultation among all the members of the *tarawad* and all of them as parties to the suit.

President.—So you don't want any proportion.

Mr. T. M. Krishna Menon.—I want only joint consultation.

Mr. A. B. Salem.—Joint consultation need not bring agreement.

Mr. T. K. Nayar.—Why not have a limit?

President.—What is your limit?

Mr. T. K. Nayar.—I suggest a majority of the adult members of the *tarawad*.

Mr. V. V Anantapadmanabha Ayyar.—I accept that.

Mr. A. B. Salem.—Then the minority cannot be trampled upon. A joint consultation would be sufficient check as the other one.

President.—It may be that they consult and they think that the *Karanavan* must render accounts. Even in spite of the existence of the sections for a large number of years, we have not heard of any such instance of an *Anandaravan* asking a *Karanavan* to render accounts.

Mr. V. K. Kochunni Menon.—That remedy may be sought by a suit for removal of *Karanavan*. Then there is no objection to remove section 35A.

President.—Section 35 is necessary but section 35A is not necessary.

Mr. A. B. Salem.—This is an implication of a right of every member with the additional precaution of a joint consultation of the members of the family which should have been previously made. But the result of the consultation need not be an agreement to file a suit. The Hon'ble Diwan Peishkar wanted only a right to be put upon them. There must be a joint consultation. It must not be a right simply to render accounts. Otherwise this amendment will be found to be over-riding the rights given under the law as it exists now. As it exists, one single member can go to the court and file a suit. If the other amendment is accepted, that will over-ride the section completely and will take away his right. Whereas, as stated by the Hon'ble mover of the Bill, he must be given that right also, and the other amendment of the Diwan Peishkar for a joint consultation would serve the purpose.

Mr. T. K. Nayar.—It will drag any *tarawad* into the court.

Mr. A. B. Salem.—Every *tarawad* can go to the court to conserve a right. As it is, the right is there.

Mr. A. Sankara Menon.—I may say one word with regard to the amendment. If the amendment proposed is

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adopted, that may give rise to the presumption that, even in a suit for partition or in a suit for removal of *Karanavan*, unless two-thirds or a majority of members agree to compel a rendering of an account by the *Karanavan*, such rendering of the account cannot be enforced.

President.—The idea of consultation is only to prevent an arbitrary action on the part of the other members.

Mr. A. Sankara Menon.—In a suit simply for the purpose of making the *Karanavan* render the accounts, the majority may be insisted upon. Then with regard to partition suits and suits for the removal of the *Karanavan*, the right can be exercised without such majority.

President.—Two-thirds of the majority.

Mr. A. Sankara Menon.—There is this difficulty. As it is, there is a right for an account in a suit for partition or for the removal of the *Karanavan*. That right ceases to exist. I mean that this amending section will be used against the enforcement of that right.

President.—So your suggestion is to leave 35 A as it is.

Mr. A. Sankara Menon.—If the amendment is accepted, there may be a proviso. Except in a suit for partition or any suit for the removal of the *Karanavan*, no suit for the purpose of compelling the *Karanavan* to account shall be brought unless it be by a majority of the members of the *tarawad*.

President.—That will be right. It can be enforced only in a suit of partition.

Mr. A. Eachara Menon.—This is the only method for removing a *Karanavan*.

Mr. K. P. Kannan Nayar.—For that we require two-thirds of the majority of the members.

President.—Simply say majority.

Mr. V. V. Anantapadmanabha Ayyar.—Under section 35 the power vested in any member of a particular *tarawad* is to see that the *tarawad* is properly managed. He is not entitled to call for accounts from the *Karanavan*. The right contemplated therein is a right to set aside an improper alienation or to file a suit for the removal of the *Karanavan* or file a suit calling for an outright partition. Accounts can be gone into, and it is a relevant matter to press for, in such suits. So far as *Marumakkathayam* law is concerned, a mere suit for accounts has not been under the contemplation of the legislature. My submission is that it would be a very great departure from the fundamental principles of *Marumakkathayam* law to enable one particular junior member to file suits for accounts. It would be very injurious to the system itself

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Therefore, my submission is that some restriction ought to be imposed. If two-thirds of the majority, that is what I put in the amendment, or at least a majority of the members feel that the account has to be sought for, that may be sought. As it is, the *Karanavan* has to keep accounts. He cannot say that he has not kept any accounts when a suit for partition or for his removal has been filed. It is not proper for any particular member to sue or to call him to render accounts. If that were allowed, my submission is that almost every *tarawad* will be dragged into court at the instigation of some others who may be outside the *tarawad*. My submission is that such a power should be very much restricted.

President.—May I take it that the discussion on this section or amendment is over?

Mr. V. V. Anantapadmanabha Ayyar.—With your permission, Sir, I may be allowed to amend that provision.

President.—Two-thirds you don't want, but you say majority.

Mr. V. V. Anantapadmanabha Ayyar.—'Not less than two-thirds' may be omitted and 'not less than a majority' may be substituted.

President.—Let this 35 A stand as it is.

Mr. K. P. Kannan Nayar.—If that is so, I would respectfully submit that the suggestion proposed by the Law Member will have to be incorporated there. Otherwise it may give rise to further difficulties. If the majority of the members alone can ask the *Karanavan* to render accounts, then it may very well be applied in a suit for removal of *Karanavan* by one member as also for partition by one member. To ask the *Karanavan* to render accounts will become practically difficult in such cases.

President.—There is that difficulty pointed out. For calling for accounts there must be a majority, and then, if that is insisted upon, this two-thirds majority should come in a suit for removal of the *Karanavan* or for partition. Otherwise there will be apparent inconsistencies.

Mr. V. V. Anantapadmanabha Ayyar.—I don't think there is any difficulty after all. In a suit for removal of *Karanavan* or in a suit for partition, the question of accounts is only an incidental matter.

President.—In a suit for partition why do you say it is incidental? Whatever he has misappropriated he must make good.

Mr. V. V. Anantapadmanabha Ayyar.—This contemplates only suits for accounts and for nothing else. Such a suit

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cannot be instituted by a junior member at present. It must be instituted by a majority of the adult members of the *tarawad*.

President.—This right will be applicable only in a suit for accounts and not in any other suit for partition or for the removal of the *Karanavan*. It won't be applicable in any other suit.

Mr. V. V. Anantapadmanabha Ayyar.—In a suit for partition or for removal of the *Karanavan*, the question of rendering accounts is relevant and will arise whether such suit is instituted by a majority or by a single member.

President.—In a suit like that one member can call the *Karanavan* to render accounts. If it is a suit to render accounts alone, the majority should join. How will you bring that distinction ?

Mr. V. V. Anantapadmanabha Ayyar.—The distinction is like this. One single member will not be entitled at all for partition according to the present Nayar Regulation unless it be there is only one single member in the *thavazhi*. In that case his interest in the family is sufficiently large in order to entitle him to file a suit for partition, and, therefore, the question of accounts can also be gone into there. The harm I want to prevent by amending this section is the possibility of any individual junior member, without any large stake in the *tarawad*,coming forward to demand accounts from the *Karanavan*.

President.—That is a relevant matter.

Mr. V. K. Kochunni Menon.—The amendment seems to me to go against the spirit of section 35. The difficulties suggested will be removed, if the right of independent suits for accounts is taken away and is left to be settled in suits for partition or for removal of the *Karanavan*. The *Anandaravan* does not lose anything thereby. He has the right to remove the *Karanavan* or to ask for partition, if the *Karanavan* fraudulently misappropriates *tarawad* funds. I think it will be better to omit the section.

President.—As such no difficulty is felt in the enforcement of the section. It is better to leave the whole thing as it is and not bring any addition or amendment.

Mr. K. P. Kannan Nayar.—We cannot agree on this particular matter.

President.—I think we need not further discuss the matter. Section 35 as it is reads thus: "Every member of a *tarawad* has the right to see that the *tarawad* estate is properly administered by the *Karanavan* and is duly conserved for the use of the *tarawad* and that his or her right to succeed to the *Karanavanship* is in no way impaired".

There is nothing said specifically in regard to the rendering of accounts by the *Karanavan*. Therefore, an attempt has been

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made by the Select Committee to introduce an addition to that section by way of 35 A which reads thus:

"35 A. Every member of a *tarawad* has also the right on behalf of the *tarawad* to compel the *Karanavan* or the manager for the time being to render an account of his management of the *tarawad* and also to recover the losses, if any, the *tarawad* has sustained on account of his fraud or misappropriation".

From the trend of the discussion we had, so far as I was able to follow, it struck me that the Members are not very keen in having this addition on account of the complication arising by introducing this section. Of course, there is an amendment of Mr. V. V. Anantapadmanabha Ayyar; he does not want the *Karanavan* to be pestered by one member. As a safeguard he wants the majority of the members to join together for calling the *Karanavan* to render the accounts. Therefore, we have this additional section 35 A and the amendment thereon. The discussion has revealed the difficulty of working out either the amendment or the renewed section. I think it is better to take the sense of the Council. I shall, therefore, put the amendment to the vote of the House.

Dr. A. G. Menon.—Why not the omission of the section also be put to votes?

President.—The section may stand, the amendment may be lost. In the order of things the amendment may be put first.

Amendment put and negatived.

Section 35 A put and negatived.

President.—Both the section and the amendment thereon are lost. Then section 39. "Delete clause (a) of section 39 and substitute clause (b) of the same section as section 39 adding the words 'without her consent' at the end".

Mr. K. P. Kannan Nayar.—The section as amended would read thus :—

"No member shall claim, or be compelled, to divide from any other member or members of the *thavazhi* of any of his, or her, lineal ascendants in the female line during the life-time of such ascendant without her consent".

That will be the section.

Now section 39 clause (a)as it stands: "No member of a *tarawad* shall claim, or be compelled, to divide from any other member or members of his, or her, own *thavazhi*".

President.—No individual partition is allowed.

Mr. K. P. Kannan Nayar.—Members within the same *thavazhi* are not entitled to claim a division. This is absolutely sought to be prohibited by this section 39 A section 40 clause 2. The male and the female children without issue, of such ascendant, that do not come under any of such *thavazhies*, may

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obtain their share and separate. This section as it stands now practically gives the right to the persons mentioned in clause 39 A. Section 39 A wants to make an absolute prohibition. In a series of decisions of the Chief Court that clause is being qualified by clause 40, the second part of that. To remove all that difficulty, the Select Committee proposes to omit that section altogether and then make the whole section read like the one that is proposed now. In fact that is all what is contemplated by section 39 A.

President.—Any Member wishing to speak anything on the point? The matter has been explained already.

Mr. V. K. Aravindaksha Menon.—As per the amendment, it becomes possible to force any member of a *thavazhi* to take his share with the consent of the lineal ascendant. The section says that without her consent it cannot be done. It follows, therefore, that, with the consent, it can be done. That will work hardship on the members.

Mr. K. P. Kannan Nayar.—That is so even now.

Mr. V. K. Aravindaksha Menon.—With the consent of the mother, can one of the children be sent away from the family against his will?

Mr. K. P. Kannan Nayar.—If he wants to divide, she can give her consent. The shares of others will have to be determined. If they don't want to separate, they can join.

President.—Take the case of a mother having two children. One of them wants to go.

Mr. V. K. Aravindaksha Menon.—Suppose the mother wants to send one of the children away. The property will then be divided into three equal parts. He will be getting only one part. After the death of the mother, however, the other boy will get the remainder. That is unfair to the one who was sent away.

Mr. K. P. Kannan Nayar.—That is so even now. The amendment does not propose any change. The Chief Court has passed many decisions.

Mr. V. K. Aravindaksha Menon.—What is the nature of those cases?

Mr. K. P. Kannan Nayar.—Take the concrete case of a mother and two boys. Supposing one boy wants to divide, he has only to get the consent of the mother. So long as the mother is alive and she gives her consent, the two can divide and go away. The boy who wants to divide can exercise his right and go away.

Mr. V. K. Aravindaksha Menon.—Supposing he does not want to go. But the mother wants to send him away.

President.—The mother has two children, and the mother does not like one of the children. She wants to send him away.

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If this provision is enacted, he is not enforced to sue. If he does not consent to go away from the *tarawad*, why should he sue ?

Mr. V. K. Aravindaksha Menon.—Because the mother can, as per this amendment, compel him to go away.

President.—So, who will bring the suit?

Mr. V. K. Aravindaksha Menon.— The other son or the mother can bring the suit.

President.—So that, the son who wants to be with the mother will be sent out and not the son whom she wants to send out. There are two sons A and B. A is not liked by the mother, and then she wants to send him away. If she wants to send him away, A must come with a suit.

Mr. V. K. Aravindaksha Menon.—He can be compelled to divide against his will as per this amendment

President.—Suppose the son says 'I don't want to go away.'

Mr. M. K. Raman.—The other man will bring his suit. He gets his one-third, the mother gets one-third and the other son will get one-third.

Mr. K. P. Kannan Nayar.—Even now that is the case.

President.—If the son wants to stick on and the mother wants to send him away, how is it possible ? If they cannot pull on together, the best thing is to separate.

Mr. T. M. Krishna Menon.—On a point of information. I want to know what is the particular significance in the use of of the word 'compel.' If the framers intend any special meaning, that may be explained. If you retain it, explain why. It is no argument to say that it is in the original Bill. It may be necessary, but I wish to know its significance. Why should it be retained?

President.—Even then what is the necessity for the word "compelled" there?

Mr. T. M. Krishna Menon.—Is it to cover any particular drastic action?

Mr. K. P. Kannan Nayar.—To me it appears, now, no member shall be compelled so far as the claim is concerned. A positive right to claim a division, that he can do with the mother's consent. With reference to the unwilling member, when the other man is seeking for partition, he will be indirectly compelled to divide. Compelling is only indirect so far as the unwilling members are concerned.

Mr. T. M. Krishna Menon.—I thought that it may have another purpose, that is to say, to give the creditors of a member who is entitled to partition the right to compel him to divide and make his share available for the debts. If that is not

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its object, then I think the words "be compelled" may be omitted altogether and the section be altered in this way: "Except as otherwise provided in section 40 no member shall claim to divide from any other member or members of the *thavvzhi* of any of his, or her lineal ascendant in the female line during the life-time of such ascendant." Delete the words "be compelled."

President.—I think this was copied from Travancore.

Mr. T. M. Krishna Menon.—We are not bound to follow it. If it is intended to serve any particular object, and if it does, of course, it must be retained. But, so far as I can see, there is no such object to be served. There is another section which says that "nothing in this Regulation shall offend any custom or usage except to the extent herein provided for." So the right that is specifically given can alone be enforced and nothing else..

President.—When one man claims to divide from the other man, it is compulsion on the other part. When the claim is put forward for partition by one, it is a sort of compulsion on the part of any other to get a division. When one member imposes a claim, it is a compulsion on the other.

Mr. V. K. Aravindaksha Menon.—No claim is set forth by any member for partition.

President.—Here, it is the claim that is put forward. Do you object to the section itself?

Mr. V. K. Aravindaksha Menon.— Why should there be "be compelled" and "without her consent" ?

President.—Without her consent, that is,, to both. Isn't it?

Mr. V. K. Aravindaksha Menon.—As the section stands, it is alright.

Mr. K. P. Kannan Nayar.—In the original section itself we had at the beginning of section 39 'except as provided for hereinafter.' We added those words simply to copy down section 39 and keep them there, provision being made in section 40. But clauses (a) and (b) we incorporated together.

President.—"Be compelled" occurs in both the clauses. Clause (a) is simply to prevent individual partition.

Mr. V. K. Aravindaksha Menon.—The section gives a right for any member to be part of the *ithavazhi*. If we add the words "without consent," it will depend upon the wishes of the mother.

President.—So far as I can see, the word "compelled" in the one is an assertion of right on the part of somebody, imposing a right, 'I want to go away from the *thavazhi*'. And the other is, we compel to divide when a member wants to be attached to that *thavazhi*, and when he does not want to go away,

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and the other members want to effect a division. The other members by effecting a partition send him away.

Mr. V. K. Aravindaksha Menon.—How can they send him away ?

President.—By partition. Of course, by consent you can send him away. Reference to court is for partition. This is only by suit. Outside court all the members of a *thavazhi* can divide. That is only a remedy given by the court. 'Except as hereinafter provided,' *i.e.*, section 39 will stand. I suppose we need not say "except as provided for in section 40", and so let those words in both the clauses be dispensed with. Is there any harm in retaining clause (a)? Clause (a) is a general statement against individual partition, and then of course there is the specification.

Mr. V. K. Kochunni Menon.—There will be no inconsistency.

President.—So, both the clauses may stand. I suppose that is a satisfactory solution. Any more doubt ? Your impression is that between themselves they cannot. This is all by court. It is only when you go to court all these conditions should be satisfied. Outside court, it is all right. But, is there any member placed in a very disadvantageous footing?

Rama Varmha Tampuran.—If all the members can go away, and suppose there are 4 members and all the four don't want to go away, can the fifth man be sent away provided the word "compelled" is there ?

President.—You can attain that result in this way. Suppose the mother in collusion with her children wants to send away one of her children. The only thing is to ask one of her sons to ask for partition. Then partition is effected and that man cannot say "I don't want partition."

Mr. K. P. Kannan Nayar.—No member can be compelled to divide from any other member. Now you will be compelled to divide from that member. When one son comes for partition and when he gets the mother's consent, he is dividing. Now, any other member of the *thavazhi* is being compelled to divide from that member. That is what the section says. He should not be compelled to divide from any other member without the consent of the lineal ascendant. You are automatically compelled to divide from that member.

President.—Suppose—let us confine ourselves to specific instances—the mother wants to send away one of her sons with his share. Is there any sanction of law for that, a mother suing to send one of her children with his share of property and keeping her other children ?

Mr. K. P. Kannan Nayar.—She can do it indirectly.

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Mr. V. K. Kochunni Menon.—She can ask all of them to file a suit.

President.—Together ?

Mr. P. Krishna Menon.—They can do it together.

Mr. K. Mohamed Seethi.—So, the mother by herself does not get a right to enforce partition unless the son is agreed to the partition.

President.—And this conflict will come only when there is more than one child. If it is the mother and the son alone, then there is no partition.

Dr. A. G. Menon.—If she consents for that partition?

Mr. V. K. Kochunni Menon.—As the law now stands, she cannot.

Dr. A. G. Menon.—She consents to be parted from her only son and goes away with some man.

President.—This section does not provide for such cases.

Mr. V. K. Kochunni Menon.—Under the present law, the mother is not entitled to get a share. Even after the amended law, under the section, she will not be entitled.

Mr. K. P. Kannan Nayar.—In the case of the mother and a son the mother cannot divide.

President.—I mean the mother on her own initiative.

Mr. V. K. Kochunni Menon.—The mother cannot divide from her son. There is the only son. If she wants, there is the further amendment. Clause B: "The lineal ascendant referred to in section 39 may also in such a case obtain her share and separate". She cannot sue for partition. That is the section.

Mr. T. K. Nayar.—The mother, of her own accord, cannot sue for partition, but the sons with her consent can. As a matter of fact, I have seen instances where sons managing the whole property have driven their mother away. In one instance there was a suit also which was decided in her favour by the Chief Court, and she was allowed her share in maintenance. Her sons are allowed to claim their share with her consent, whereas the mother is not entitled to it. Why not she also have a right to claim her share ?

Mr. K. P. Kannan Nayar.—That anomaly is being attended to.

Mr. T. K. Nayar.—Can the mother claim her share now ?

President.—Let us decide the question as to whether, by the amendment, right for partition can be granted to the mother. Why should she be in a disadvantageous position ?

Mr. V. K. Kochunni Menon.—There may be a minor son. If the mother is allowed to take her share, she fears that he won't get a share.

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President.—If the mother has got only a minor son, then the mother cannot be separated, but if there is an adult son, she would claim separate maintenance, if she cannot divide from her son.

Mr. K. P. Kannan Nayar.—Under the law as it stands now, the mother has not the right even in a suit for partition. Even if she consents and a suit is brought by other members, she is not entitled to a share. However, the Committee has attempted to remove that difficulty by introducing clause (b): "the lineal ascendant referred to in section 39 may also in such a case obtain her share and separate". If the mother is to be given absolute right to divide and go away, we have only to take away those words 'in such a case.' Clause B: "No member shall claim, or be compelled, to divide from any other member or members of the *thavazhi* of any of his, or her, lineal ascendants in the female line during the life-time of such ascendant". In section 40, the amendment is this:—"(a) After the death of the lineal ascendant referred to in section 39, or with her consent, each collateral *thavazhi* represented by a majority of the major members thereof, or any member who does not come under any such *thavazhi*, may claim an outright partition of all properties over which the *tarawad* has a power of disposal." Even clause (b) says: "The lineal ascendant referred to in section 39 may also in such a case obtain her share and separate." Now it may be doubted whether the words 'in such a case' do not actually refer to a suit for partition by any other collateral *thavazhi* or by any other member and the mother irrespective of it can bring a suit. But the Select Committee does not want that the mother should have that absolute right. If the House says that the mother should be given such a right, she may be given.

I don't think in the case of mother's children they form another *thavazhi*.

Mr. T. M. Krishna Menon.—When the grand-mother sues for partition making all her daughters, daughters' children, all parties, can they claim their share for partition ?

President.—Was this matter considered by the Select Committee ?

Mr. V. K. Kochunni Menon.—Our opinion was that it should be.

President.—The mother or the lineal ascendant shall be given the right for partition at her instance.

Mr. V. K. Kochunni Menon.—She has not got that right.

President.—Any individual or *thavazhies* may be desirous of preserving the *thavazhi*, and so the mother ought not to be given the right.

Mr. T. K. Nayar.—The addition of these words 'with her consent' itself shows that it aims at individual partition.

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President.—If she is desirous of preserving the *thavazhi*, why should we cut off the *thavazhi* system altogether?

Mr. T. K. Nayar.—That was the rule till now.

President.—It was the rule till now. Then why should we cut off the *thavazhi* altogether?

Mr. T. K. Nayar.—Till now the impression was that when the mother is alive her issues cannot be partitioned.

Mr. K. P. Kannan Nayar.—If she consents?

Mr. T. K. Nayar.—In such a case why not let her also have her share?

Suppose there is a mother and a child. He lives apart from his mother. He manages the whole property. There may be some private misunderstandings between the mother and the son, and the son drives out his mother. There are many instances like that.

Dr. A. R. Menon.—There was some difference of opinion on that specific point. I propose that either this power of giving permission should be done away with. Nobody must have that right, that is, individual partition, or the mother should not be given the right. At best the natural affection of the mother will not allow the effecting of partition during her life-time. If it be so, even such a power should not be given to the mother to give consent, and then the partition could be effected during a mother's life which should be done away with. This was the opinion of the majority of the Members of the Committee. Mr. Kannan Nayar alone, if I remember right, was very particular in effecting individual partition. I remember perfectly well that Mr. Kannan Nayar was very particular in having it.

Mr. K. P. Kannan Nayar.—The Member evidently does not seem to have understood what the existing rules are. The mother with her consent can give the right for partition to the individual members. That is the law as it now stands.

Dr. A. R. Menon.—And you suggested that she should be deprived of her right.

Mr. K.P. Kannan Nayar.—There are other Members of the Select Committee here who can be referred to.

President.—Then, why should we change the law, unless there are specific reasons?

Mr. T. M. Krishna Menon.—Suppose a mother has got an only son, and he misbehaves. It is to prevent such cases that this amendment is sought to be introduced. There may be hard cases. In such cases the mother should have a right to claim her share.

President.—As matters now stand, the amendment is quite all right. The change, as suggested by the Select Committee,

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is this:—"Delete clause (a) of section 39 and substitute clause (b) of the same section as section 39 adding the words 'without her consent' at the end". Now, on a consideration of all the circumstances, it is found desirable to have both the clauses with certain safeguards, *i. e.*, add 'except as hereinafter provided' to clause (a).

Clause 39, as amended by adding 'except as hereinafter provided' to clause (a), was retained.

The amendment of the Select Committee was negatived.

President.—The next is: "For section 40, the following shall be substituted:—

"(a) After the death of the lineal ascendant referred to in section 39, or with her consent, each collateral *thavazhi* represented by a majority of the major members thereof, or any member who does not come under any such *thavazhi*, may claim an outright partition of all properties over which the *tarawad* has a power of disposal.

(b) The lineal ascendant referred to in section 39 may also in such a case obtain her share and separate".

I think there are some alterations. The reasons may be explained to the House.

Mr. K. P. Kannan Nayar.—The section as it is makes only one change, and that change is in clause (b): "The lineal ascendant referred to in section 39 may also in such a case obtain her share and separate". Some hard cases were found where the Chief Court could not, under the existing law, suggest a relief. So the Select Committee thought it necessary to insert such a provision and remove that difficulty. If she wants, she can claim the share. She should not be compelled to live with members with whom she does not like to live. With reference to the previous portion, the wording alone has been changed. There has been no substantial change in law.

Mr. T. M. Krishna Menon.—It was a doubtful case. Now the matter has been made clear in view of the decision of the Chief Court.

Mr. K. P. Kannan Nayar.—So far as section 40 is concerned, that clause by itself did really create some difficulty. Now we have given the judicial interpretation by amending this section.

Rama Varmha Tampuran.—Suppose a mother has only one boy and he behaves badly

President.—The fundamental idea is that no individual partition is allowed. There may be hard cases, but you cannot provide laws for all these cases. There may be individual cases.

Rama Varmha Tampuran.—It is not an individual case.

President.—That is, as pointed out by the Hon'ble the Revenue Member, striking at the root of the principle, viz., individual partition.

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Rama Varmha Tampuran.—The case brought forward by the Member for Pazhayannur is really very hard. We have made provision for all the other cases, and I think it would only be right if some provision is made for this also.

Mr. V. V. Anantapadmanabha Ayyar.—The words "also in such a case" may be omitted, and the words "sue and" may be substituted.

President.—I shall put the amendment to the vote. The amended section runs thus:—

"The lineal ascendant referred to in section 39 may sue and obtain her share and separate."

Amendment put and negatived.

Clause as amended by the Select Committee put and agreed to.

President.—The next section is 41. For section 41, the following shall be substituted:—

"Any individual or *thavazhi* mentioned in section 40 shall be entitled to so much of the *tarawad* properties as will fall to such individual or to the members of such *thavazhi* as a whole if a division per capita were made among all the members of the *tarawad* at the time of the partition."

Clause put and agreed to.

President.—Then 41A. After section 41, add the following as section 41A:—

"Until partition, no member of the *tarawad* shall be deemed to have a definite share in the *tarawad* property liable to be seized in execution nor shall such member be deemed to have any alienable or heritable interest therein."

Mr. K. P. Kannan Nayar.—That is in virtue of a decision. We have only codified it.

President.—What is your amendment, Mr. Anantapadmanabha Ayyar?

Mr. V. V. Anantapadmanabha Ayyar.— Section 41A has been taken bodily from the Travancore Nayar Regulation, section 39. The object of this section was discussed in the Travancore Legislative Council. It was to prevent the share of any particular member from being attached in execution of a decree before partition. Now that section was further necessary in Travancore because the Nayar Regulation there provided individual partition, but here we have no individual partition. So the proviso which is necessary in the case of individual shares is not necessary here. So there is absolutely no use in introducing this section in this piece of legislation, because we have not already provided for individual partition. My amendment is to omit section 41A altogether.

Mr. V. K. Kochunni Menon.—The Chief Court held that there was no such law, and it is only to codify this. We are only giving effect to this decision.

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Mr. V. V. Anantapadmanabha Ayyar.—I have moved an amendment to section 41A and that is as follows:—

"Substitute for section 41A. 'The properties movable and immovable appertaining to a *tarawad* shall belong to the members thereof in equal shares and shall be held by them as tenants in common, in the right to partition.' "After 41A add explanation: A definite and unambiguous indication by a member of a *tarawad* of intention to separate himself and to enjoy his share in severalty amounts to partition within the meaning of this section."

If section 41A is accepted, then this explanation would be necessary. According to the interpretation of the clause in the Travancore Bill, no member can claim his share until the final decree for partition is over. This is evident from the Legislative Council Proceedings. That will show that they wanted to keep off the shares from being seized in execution until the final decree for partition was over. The member who was in charge of the Travancore Bill was Mr. Parameswaran Pillai, now a Judge of the High Court. But, when the matter came up before him after the Nayar Regulation, he had to decide differently. The facts of the case were as follows:—After filing a suit for partition the plaintiff died, and his sons came forward to be impleaded as legal representatives. Then the question was whether he had any heritable interest in the share of the family property, and then the High Court decided that partition must be deemed to have been effected by an unequivocal and unambiguous intention and not only by an actual out and out partition. This is reported in the Travancore Law Journal. Section 41A need not be omitted, if this explanation is taken along with it.

Mr. T. M. Krishna Menon.—One point may be noted. Suppose a man makes a transfer by a registered deed. Then it may be said that by that document itself he declares his intention. That explanation is unnecessary.

The House rose for lunch at 2 p.m. and met again at 3 p.m. with the Deputy President in the Chair.

Deputy President.—We have finished up to clause 41.

"In section 42 omit "and" between "40 and 41" and insert "and 41A" after '41' ".

No explanation is necessary for that.

Clause put and agreed to.

Deputy President.—"For section 43 the following shall be substituted :—

"Property obtained from a husband or father by wife or widow, child or children or the *thavazhi* or *thavazhi* of predeceased daughter or daughters by inheritance, gift or bequest or purchased for their benefit shall, unless a contrary intention is expressed in the instrument of gift or will or purchase deed, belong to the wife or widow, each of the children and each of the *thavazhies* of deceased daughters in equal shares, they holding it as tenants in common with right to partition".

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The operation is necessitated by the changes made to sections 14 and 17 making it clear that the daughters also have a share. I don't think there is any opposition to this.

You may take that also as passed.

Mr. T. M. Krishna Menon.—One minute.

Deputy President.—Some alteration is suggested. That is due to the amendment to sections 14 to 17. Deceased daughter's children are also entitled to the inheritance. After the death of the daughter, the daughter's share goes to the children.

Mr. T. M. Krishna Menon.—Will these things go well together: "or purchased for their benefit" and "shall unless a contrary intention is expressed"? If it is purchased for benefit, then no contrary intention would appear.

Deputy President.—It may have been purchased for their benefit. Half the benefit may go.

That also may be taken as passed.

Clause put and agreed to.

Deputy President.—"After section 43, add the following as section 43 A :—

"If any property or right rendered divisible under this chapter is incapable of actual division or cannot be divided without seriously lessening its value or utility, the court shall have the power to direct the sale or enjoyment in common or by turns of such property or right as the circumstances of the particular case would permit".

It is only the mode of enjoyment as regards properties that cannot be divided. There is provision in the *Civil Procedure Code* also. In the case of that provision it may or may not be necessary. There is no objection for this provision. We shall go back to the first and second clauses.

Clause put and agreed to.

Mr. K. P. Kannan Nayar.—The preamble is sought to be inserted. It is for this reason, that the Select Committee has practically changed the words 'amending Bill', and redrafted a new Bill which is the one that is now before the Council. The Bill must have a name and a preamble also. The only change is "in some respect" ought to be "in some respects". That is a printing mistake.

Deputy President.—The preamble and title read thus:—

"(1) Insert a preamble at the beginning as follows :—

Whereas it is expedient to amend the Cochin Nayar Regulation, XIII of 1095 in some respects, it is hereby enacted as follows:—

(2) Insert after the preamble a section as section 1 thus:

This Regulation may be called 'A Regulation to amend the Cochin Nayar Regulation, XIII of 1095' and it shall come into force at once".

I don't think there is any opposition.

Preamble and short title put and agreed to.

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Deputy President.—What is the next step? We have passed clause by clause. We shall put it again to the votes. Nothing more I believe.

Mr. K. P. Kannan Nayar.—Except the last reading.

Deputy President.—I made a mistake. I thought that the explanation of yours was disposed of.

Mr. V. V. Anantapadmanabha Ayyar.—It was not disposed of

Mr. A. B. Salem.—Whether the explanation should be allowed or not.

Deputy President.—For that, I shall take the sense of the Council.

Mr. V. V. Anantapadmanabha Ayyar.—I thought that the mover of the Bill accepted that explanation.

Deputy President.—He has not accepted it.

Mr. K. P. Kannan Nayar.—As it stands, I don't accept it. The word 'intention' may be changed.

Mr. V. V. Anantapadmanabha Ayyar.—I have absolutely no objection to change 'intention' into 'declaration'.

Mr. K. P. Kannan Nayar.—Since that is the view expressed by the Chief Court, there is no harm.

Mr. V. V. Anantapadmanabha Ayyar.—That will only make it clear.

Deputy President.—Is that the sense of the Council? Explanation of section 41-A will be accepted?

Any opposition to that?

Mr. A. B. Salem.—The mover of the Bill is in charge. He has accepted.

Mr. V. V. Anantapadmanabha Ayyar.—The word 'intention' may be changed into 'declaration'.

Mr. T. M. Krishna Menon.—What is the necessity for this?

Mr. V. V. Anantapadmanabha Ayyar.—Difficulty will arise on account of this fact. The courts cannot be considered to have construed the legislation which is passed now. It cannot be said that the courts have already construed.

Deputy President.—The original section stands.

Mr. V. V. Anantapadmanabha Ayyar.—But the explanation given to section 41 A is just now added—the explanation as to section 41 A which is passed just now. Therefore, this explanation is necessary.

Explanation to section 41 A put and negatived.

Mr. V. V. Anantapadmanabha Ayyar.—Poll, Sir.

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The House divided: Ayes 4, Noes 5.

Ayes.

1. Mr. V. V. Anantapadmanabha Ayyar.
2. Mr. K. P. Kannan Nayar.
3. Mr. T. K. Nayar.
4. Mr. P. Kumaran Ezhuthassan.

Noes.

1. Mr. A. Eachara Menon.
2. Mr. P. Krishna Menon.
3. ,, T. K. Krishna Menon.
4. ,, T. M. Krishna Menon.
5. ,, A. B. Salem.

Deputy President.—Four against five. The others are neutral.

Mr. K. P. Kannan Nayar.—I move that the Bill may be taken up and passed at the next sitting on Friday, the 21st of February 1930.

Mr. P. Krishna Menon.—I second it.

Deputy President.—Anybody opposed to it?

Mr. T. K. Nayar.—Why not have it at the next meeting?

Deputy President.—I shall take the sense of the House. That is all that I can do. In the third reading no amendment can be accepted by the Government.

Motion put and agreed to.

The Cochin Kuri Bill.

Mr. C. A. Kunjunni Raja.—The Malayalam translation of the Bill was published only in the last Gazette, *i. e.*, last Saturday. There is also a demand that some more time may be given to consider in detail the amendments. I don't move the Bill this time.

Hence the motion as well as the following amendments were not considered :—

Mr. A. EACHARA MENON.

(1) In section 19 (2) (17 (2) of the amended Bill) omit the words 'unless such liability is expressly excluded by the terms of the Vaimpu.'

(2) In section 27 (25 (1) of the amended Bill) add after 'payment' 'of the present value,' and after 'subscriptions' 'at 6 per cent per annum.'

Mr. C. V. KURIYAN.

(1) In section 2 delete the words 'except to the extent specified in section 50 below.'

(2) In section 3 (9) change the word 'Sthirapalisa' into 'Veethapalisa.'

(3) In section 5 delete the words 'it shall be void' and add in their place 'voidable at the option of the subscriber.'

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